

VULNERABLE ADULTS / ELDER ABUSE

Who is considered a vulnerable adult?

An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently. MCL 750.145m(u)

A person who is placed in an adult foster care family home or an adult foster care small group home pursuant to section 5(6) or (8) of 1973 PA 116, MCL 722.115. MCL 400.703 Section 3(1)(b).

Vulnerable is defined as a condition in which an adult is unable to protect himself or herself from abuse, neglect or exploitation because of a mental or physical impairment or because of advanced age. Section 11(f) Social Welfare Act, MCL 400:11.

Vulnerable Adult Financial Exploitation MCL 750.174a

A person shall not through fraud, deceit, misrepresentation, coercion, or unjust enrichment obtain or use or attempt to obtain or use a vulnerable adult's money or property to directly or indirectly benefit that person knowing or having reason to know the vulnerable adult is a vulnerable adult. Criminal penalties are based on the amount of funds involved.

Vulnerable Adult Assault and Abuse

MCL 750.81 and MSA 28.276 and others reference special provisions for battery and/or sexual assault victims with domestic relationships with the assailant:

- The victim is the assailant's spouse or former spouse.
- The victim has had a child in common with the assailant.
- The victim is a resident or former resident of the same household

Elder Abuse Facts

Abuse comes in many forms. Know the signs and symptoms of abuse and don't be hesitant to act on a gut feeling. Educate those around you about Elder Abuse and what to do if they believe a vulnerable adult is being abused. Ensure that support is available to caregivers. Often abuse is the result of frustrated, overworked caregivers who became overwhelmed and lash out at the vulnerable adult.

Most incidents of elder abuse do not happen in nursing homes; rather it takes place at home. The great majority of older people live on their own or with their spouses, children, siblings, or other relatives, not in institutional setting. When elder abuse happens, family, other household members, and paid caregivers usually are the abusers. Although there are extreme cases of elder abuse, often the abuse is subtle, and the distinction between normal interpersonal stress and abuse is not always easy to discern.

There is no single pattern of elder abuse in the home. Sometimes the abuse is a continuation of long-standing patterns of physical or emotional abuse within the family. Perhaps, more commonly, the abuse is related to changes in living situations and relationships brought

about by the older person's growing frailty and dependence on others for companionship and for meeting basic needs.

It isn't just infirm or mentally impaired elderly people who are vulnerable to abuse. Elders who are ill, frail, disabled, and mentally impaired or depressed are at greater risk of abuse, but even those who do not have these obvious risk factors can find themselves in abusive situations and relationships.

Stay alert to possible signs and symptoms of the different forms of abuse, signs include:

- Unexplained injuries or behavior;
- Vulnerable adult appears afraid of a person or certain situations;
- Vulnerable adult is kept isolated from others;
- Vulnerable adult reports abuse.

What an Adult Child of Elder Parents Can Do to Help Protect Them:

- Talk with your parent(s). Get a feel for what they understand, what they want and what they do with their time.
- If you feel that your parents are at risk for their physical or financial welfare, file a report with Adult Protective Services (269) 467-1250. APS will do a home visit and make an assessment of their needs.
- Have medical assessments done. It will be necessary to have medical documentation to support housing and/or financial assistance.
- Ensure that your parents have prepared a will.
- Consider obtaining Power of Attorney (POA). There are varying powers available and need not take control from your parent's ability to make their own decisions. A POA is very helpful when needing to access medical or financial records.
- Know your parent's financial history. Learn where they bank, have their investments and what their spending habits are.

Criminal or Civil Remedies if you suspect abuse has occurred:

- A restraining order may be requested to retrain a person from having contact with the vulnerable adult. Applications for a PPO can be obtained thru the St. Joseph County Clerk's Office. You will need to complete the required forms and they will then be reviewing by a judge to determine what if any restraints will be approved and then served on the individual you are filing against.
- You may want to discuss with your attorney various civil or criminal remedies available when intentional infliction of emotional distress, duress, negligence, conversion, fraud and deception, breach of fiduciary duty, unjust enrichment, breach of contract, etc. occur.
- Court ordered Conservatorship or Guardianship (see section below)

What is a Conservatorship and Guardianship and when and how are they obtained?

The traditional distinction between guardians and conservators is as follows:

- **Guardians** – A guardianship is a legal right given to a person to be responsible for the care of another who is incapable or providing for themselves. This includes food, health care, housing and other necessities.
- **Conservators** - A conservatorship is a legal right given to a person to be responsible for the assets and finances of a person deemed fully or partially incapable of providing these necessities for himself or herself.

Some jurisdictions use the term conservatorship to be synonymous with “guardian of the estate” or a similar name.

There are many circumstances where a person is still able to live an independent life, but may require assistance with his or her assets due to failing health or disability. Thus it is not unusual for a petition to be made for the appointment of a conservator, even where the allegedly incapacitated person does not require a guardian.

When Is A Conservatorship Required ?

It may be necessary to petition a court to appoint a legal guardian for persons:

- Who have physical or mental problems that prevent them from managing their own financial affairs;
- Who have no person already legally authorized to assume responsibility for them; and
- Where other kinds of assistance with financial management will not adequately protect them.

The Purpose of Court Supervision

The court supervises the conservator's actions by requiring that permission be obtained in advance of certain major transactions (such as the sale of a legally incapacitated person's home), and through annual accountings, in order to ensure that the legally incapacitated person's assets are being properly managed, bills are being paid, nobody is misappropriating funds, and the estate is not being wasted.

Avoiding Conservatorship

It is possible to avoid the necessity of a conservatorship through estate planning. A good estate plan will include a general durable power of attorney to permit a trusted individual to manage your personal affairs in the event of your incapacity. You may also create a more limited power of attorney, which protects your assets in the manner you desire rather than leaving their management to the discretion of a conservator or court. In most cases, when this document has been executed in accord with the laws of your state, it will not be necessary for your loved ones to seek the appointment of a conservator should something happen to you.

You may also choose to place your assets into a living trust, such that they are automatically under the management of a designated trustee in the event that you become disabled.

Ombudsman Program

Ombudsmen are advocates for residents of nursing homes and adult foster care homes.

- They represent the interests of residents
- They work with individual residents to resolve programs and promote quality care.

- Provide a community presence by routinely visiting residents of long term care facilities.
- Educate residents about their rights.
- Will answer questions on alternatives to nursing home care and shopping for long term care services.

St. Joseph County Resources

- St. Joseph County Department of Human Services (Adult Protective Services Unit), Centreville, MI – 467-1250
 - Adult Protective Services assures adults in need of protection are living in a safe and stable situation including legal intervention, where required, in the least
- St. Joseph County Probate Court, Centreville, MI – 467-5538
 - Domestic violence and PPO assistance – 467-5649
- St. Joseph County Community Mental Health, Three Rivers, MI. -273-5000
- Michigan Protection & Advocacy Services (MPAS) – 1-800-288-2953
 - MPAS can provide technical assistance, referrals, direct representation through advocates and attorneys.
- St. Joseph County Commission on Aging, Three Rivers, MI. – 279-8083 or 800-641-9899
- St. Joseph County Domestic Assault Shelter, Three Rivers, MI. - 1-800-828-2023

MICHIGAN RESOURCE LIST

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Agency	Website	Telephone
Michigan Office of Services to the Aging The state agency responsible for provision of services to Michigan's older adults.	www.miseniors.net	517.373-8230
Michigan Protection and Advocacy Services (MPAS) Provides assistance to individuals with disabilities.	www.mpas.org	800.288-5923
Michigan Rehabilitation Services	www.maro.org	517-484-5588
Michigan Resource Center on Domestic and Sexual Violence Collection of books, videos, journals and other media promotes awareness and increases accessibility of educational information and resources for the state of Michigan.	www.mcadsv.org/mrcdsv/index.html	517. 381-4663
Michigan Prosecuting Attorneys Coordinating Council provides training, legal research, technical support, law updates and other services for prosecuting attorneys and law enforcement officers.	www.ag.state.mi.us/pacc or www.michiganprosecutor.org	
UCP Michigan	www.ucpmichigan.org	800-828-2714
State Bar of Michigan Legal Aid directory	www.michbar.org/public_resources/legalaid.cfm	

Vulnerable Adult Abuse Resource List

Michigan Resources

Agency	Website	Telephone
Adult Protective Services- Vulnerable Adult Helpline Statewide, toll-free, 24 hour/7 days, adult abuse information and adult protective services reporting service.	http://www.michigan.gov/dhs/0,1607,7-124-5452_7122---,00.html	800.996-6228
Area Agencies on Aging (AAAs) Regional planning, advocacy and service agencies for Michigan seniors. There are 16 AAAs in Michigan.	Information available at www.miseniors.net	List attached
Autism Society of Michigan	www.autism-mi.org	800.223-6722
Lawyer Referral Service (State Bar of Michigan) Designed for those interested in hiring a lawyer.		800.968-0738
Legal Hotline for Michigan Seniors Free legal advice and information and/ or referral to a local attorney for Michigan seniors age 60 and older. The hotline also operates the Michigan Pension Rights Project that provides legal advice and assistance on pension issues.	www.elderslaw.org	800.347-5297
Medicare/ Medicaid Assistance Program (MMAP) For help/information regarding Medicare, Medicaid, Medicare drug benefits and long term care insurance.	www.mymmap.org	800.803-7174
Michigan Coalition Against Domestic and Sexual Violence MCADSV is a statewide membership organization of over 70 domestic and sexual violence programs and over 200 allied organizations and individuals.	www.mcadsv.org	517.347-7000
Michigan Commission for the Blind Provides educational, training and rehabilitation opportunities to persons who are blind.	www.michigan.gov/cis/0,1607,7-154-28077_28313---,00.html	800.292-4200 800.323-2535 (UP)
Michigan Commission on Disability Concerns The Commission responds to and advocates on behalf of Michigan's 1.9 million people with disabilities.	www.michigan.gov/cis/0,1607,7-154-28077_28545-14846---,00.html	877.499-6232
Michigan Crime Victims Compensation Financial assistance to crime victims for un-reimbursable costs.	www.michigan.gov/mdch/0,1607,7-132-2940_3184---,00.html	517.373-7373
Michigan Developmental Disabilities Council	www.michigan.gov/ddcouncil	517-334-6123
Michigan Long Term Care Ombudsman Program Helps long-term care residents and concerned relatives with complaints and long-term care issues.	www.miseniors.net/MiSeniors+Home/Ombudsman-Home.htm	866.485-9393
Michigan Office of Attorney General ♦ Health Care Fraud Unit: Investigates and prosecutes Medicaid-funded health care facilities and their employees who harm or neglect their patients or residents. ♦ Consumer Protection Division: Handles complaints about illegal business practices and scams.	www.michigan.gov/ag	24-hour Hotline 800.24-ABUSE or 800.242-2873 877.765-8388

